



April 3, 2001

Ms. Anne M. Constantine
Legal Counsel
Dallas/Ft. Worth International Airport
P.O. Drawer 619428
DFW Airport, Texas 75261-9428

OR2001-1325

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 145597.

The Dallas-Fort Worth International Airport Board (the "board") received a request for "copies of all proposals that were submitted for the RFP regarding the DFW Airport Employee Assistance Program." The board has submitted to this office the bid proposal that Workers Assistance Program, Inc. ("Workers Assistance") submitted to the board. The board takes no position as to whether any of the submitted information relating to Workers Assistance is excepted from required public disclosure. Under section 552.305 of the Government Code, you notified Workers Assistance by letter dated January 25, 2001, of the request for information and of the company's right to submit arguments to this office as to why its proposal should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances).

An interested third party is allowed 10 business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). To date, Workers Assistance has submitted no comments to this office. But you inform this office that Workers Assistance has objected to the release of portions of its proposal under sections 552.101 and 552.110 of the Government Code. We accordingly have considered these exceptions with respect to the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 protects information that is deemed to be confidential under other law. *See*

Open Records Decision Nos. 611 at 1 (1992) (common law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Neither the board nor Workers Assistance has asserted any law, and this office is not aware of any law, under which any of the information that Workers Assistance submitted to the board is deemed to be confidential. Therefore, none of that information may be withheld from disclosure under section 552.101 of the Government Code.

Section 552.110 of the Government Code protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b). But in the absence of any argument by either the board or Workers Assistance, this office has no basis for concluding that any of the information that Workers Assistance submitted to the board is excepted from disclosure under either component of section 552.110. Therefore, the proposal submitted by Workers Assistance must be released to the requestor in its entirety. *See* Open Records Decision Nos. 552 at 5 (1990) (stating that if governmental body takes no position, attorney general will grant trade secret exception under statutory predecessor to section 552.110(a) if third party makes *prima facie* case under section 757 of the Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (stating that a business enterprise that claims exception under section 552.110(b) must show by specific factual evidence that the release of requested information would cause it substantial competitive harm).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

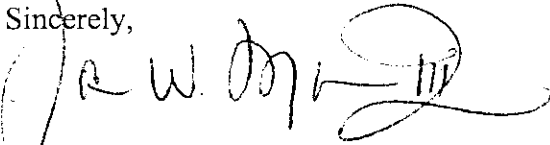
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 145597

Encl: Submitted documents

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